

STATE AND TRIBAL GOVERNMENT WORKING GROUP (STGWG)
Snowbird, Utah
October 16, 2007

MEETING NOTES

(C = STGWG participant comment; Q = STGWG participant question; A = DOE answer)

Tribal Executive Session

(DOE personnel now in the room)

A transportation presentation was given by Paloma Hill (*via hard copy; presentation included in the folders*). The routing process is not on hold, but has slowed with the departure of Jay Jones from his previous position. The next Transportation External Coordination Working Group (TEC) meeting will be February 5-7, 2008, in San Antonio, Texas.

Linda Cohn (DOE) is on the nuclear weapons side of things.

DOE is looking at conducting a tour of Yucca Mountain on the 14th or 15th of November; the date will be posted on the TEC website. (Note: *Due to a lack of participation, the tour will now be held in spring 2008*).

Q: Has there been coordination between the Greater Than Class C Low Level Waste people and those involved with the National Transportation Plan?

A: Corinne Macaluso has been working with Gary Lathrum; they may be reinventing the wheel.

A: Christine Gelles should be able to answer this question.

Introduction of Steven J. Morello:

Mr. Morello gave thanks to the Creator for the beauty of the day, and for us all being here together. He acknowledged the time it has taken to get him into the new Office of Indian Energy Policy and Programs. Mr. Morello's background (*biography included in the folders*): A lawyer for 30 years; 20 as a corporate attorney, 10 as a government attorney. He also spent some time in the Army, and became general counsel. He is an Ordained Roman Catholic Deacon. 9/11 changed everything for him. In September 2004, he became general counsel for his tribe (Sault Ste. Marie Tribe of Chippewa Indians) and did ethics and governmental relations work for the two years he was there. He learned a lot about what it meant to be a Native American, and what their issues were. He learned the importance of having the tribe diversify outside of gaming but could not make much progress. Mr. Morello created the Native American Insurance Agency which is still in existence; he is on official leave from the company. His tribe consists of approximately 34,000 members, with about 12,000 of them living in the upper peninsula of Michigan. His tribe is a lineal descendant tribe rather than a blood quantum tribe.

Mr. Morello acknowledged the fact that he only has 17 months to do his new job. He sees Indian energy and related programs to be every bit as important as gaming, but even more important than gaming. Gaming is only one step toward developing sovereignty; they need energy to develop businesses. The focus of Title Five of the Energy Policy Act of 2005 (EPAAct) is renewable and other forms of energy, as opposed to traditional fossil fuels like it is within the Department of Interior. He has talked to Carl Artman (assistant secretary of Indian Affairs) to make sure their agencies do not compete with each other. Mr. Morello sees the need to cooperate with other agencies, and not compete with them where there are significant Indian programs underway. The purpose of his first round of visits through Indian country is to listen to the tribes. He wants to know what is important to Indians and what is on their minds; what are their priorities? What are the goals for tribes, and where do they want to go? This is not a paternalistic mindset; he is looking at it as a people-to-people and government-to-government relationship. He does not want to see silos within various programs and agencies, and wants to break down some of those silos in his new position.

(Lunch)

Full STGWWG Executive Session

(DOE personnel now in room)

Kristen Ellis and Paloma Hill will work with Bob Fry to get answers to the questions that were asked in the tribal morning session. *(Questions and answers were distributed to the group during Thursday's STGWWG meeting).*

Mr. Morello gave another brief introduction of himself for those who were not present during the morning session. He leaves his position on January 20, 2009.

Tom Winston: Shared with DOE what STGWWG talked about earlier in the day: GNEP, NRDA, GTCC LLW, Tribal Summit, Implementation Framework (IF). Stated that there is a commitment by the states to support the tribal issues. One substantial issue is NRDA. STGWWG sees this as an opportunity to reconstitute the Long-Term Stewardship (LTS) Committee. There is maybe not a lot of ground to re-plow on this (LTS), but there surely is on NRDA. Looking to reconstitute the LTS committee to the NRIA (Natural Resource Injury Assessment) Committee (NRIA/LTS). STGWWG would especially like to work with National Association of Attorneys General on this, as they already have some position papers and information relating to this. This is a difficult issue for DOE; there is not a strong commitment from top-to-bottom within DOE. Ines Triay has shared a genuine interest in this.

Matt Duchesne: It would be nice to get a sense from the group on what their interests are in NRDA, and how it wants to proceed. James Rispoli and Ines Triay are ready to address this. Some sites seem more ready to work on this issue than other sites (e.g.,

Hanford). Can maybe use Hanford as a case study, as well as Los Alamos. DOE is not yet sure what they are doing with this.

C: This is good to hear, we want to work with DOE; set a baseline, and look at how the groups can be of assistance to DOE. Matt would be the primary contact on NRDA issues.

Debbie Swichkow and Frank Schwartz (Office of Nuclear Energy) Presentation on GNEP

Part of Debbie's work is working with communities and parties, especially as it relates to NEPA.

Frank Schwartz: GNEP was launched in February 2006, and strategies for moving forward have been developing since then. The overall goal is to provide safe and secure nuclear power worldwide, and to meet the need to produce electricity for growing demands throughout the world. Waste from nuclear facilities has been a problem for countries since nuclear power was developed. Some countries are already recycling, but the U.S. only uses a once-through process. GNEP has two components: international and domestic. He is mainly involved with the PEIS. There are three major, necessary pieces of the program: (1) expanded research and development to support advances in nuclear reactor technologies, as well as advances in waste treatments and waste form technologies; (2) development and deployment of recycled technologies and what they would be; and (3) redeployment of recycled materials into reactors.

Debbie Swichkow: International piece: engaged with advanced reactor countries; many countries potentially will be involved.

Q: What is the progress of siting studies?

A: They were completed on May 1, 2007, and will be included in the PEIS. The PEIS will not be site-specific, but will be more programmatic in nature. The siting studies will be included in the final document. The draft PEIS will be completed in late fall 2007, with public meetings occurring in December and January. The final PEIS will be completed in late spring 2008, with a final Record Of Decision (ROD) in summer 2008. The regulations require a minimum of 45 days for comments.

Q: Would the Nuclear Waste Policy Act have to be amended to allow this to go forward?

A: Do not know.

(NGA members leave for their own meeting).

Q: How long will the waste stay on site before being moved? Where does it go if Yucca Mountain does not open?

A: These issues will have to be addressed through the specific design and licensing process for the specific facility. If Yucca Mountain does not open, who knows? This could affect the future of the nuclear industry in the U.S.

Q: How far will you get with the program by 2009?

A: We expect to publish the ROD by then, which will detail how DOE intends to proceed, but DOE will not have the sites selected.

Q: Where is DOE looking at further down the road, if Yucca Mountain would be full by 2010, as currently projected?

A: The Office of Civilian Radioactive Waste Management (OCRWM) is dealing with this. The Office of Nuclear Energy provides input and works with OCRWM. There is now an effort underway to address this issue (e.g., looking at projections for GNEP).

Paloma Hill: We always propose legislation to get the Yucca Mountain capacity limit lifted; maybe look at another repository, or interim storage.

Q: What does DOE expect to spend on this? Will other countries contribute, or is the U.S. paying for it alone?

A: We have not addressed this yet; just signing agreements in principal.

Frank Schwartz: The department is looking at all alternatives.

C: We are curious about the range of alternatives being looked at, as Congress surely will be.

Frank Schwartz: Review the PEIS when it comes out, and then provide comments.

C: Tribes are not the public; consultation is a key issue on this. The federal government has a fiduciary to tribes; these are high-level, government-to-government discussions. The consultation process is above the NEPA process; DOE has their Indian Policy.

A: GNEP resides in assistant secretary Spurgeon's office.

(Break)

Discussion Relating to Implementation Framework

Kristen Ellis: Clay Sell (deputy secretary) looked at it today; the only office after his is the Secretary's. The Procurement Office was concerned that some things in the Implementation Framework (IF) did not match up (comply) with department-wide procurement policies and procedures.

Q: We understand there were some changes made since we last saw it in June 2006. Can we see the red-line changes?

A: That is inappropriate since it is now in the Secretary's office, and because it is still his prerogative to make changes. Changes that he (Brandt) is aware of have not been major; there have been edits to make it read easier, but there have been very few substantive changes. Brandt is willing to have a conference call to discuss the changes once it is timely to do so. The Offices of EM, NE, Science and NNSA are signatories.

Steve Morello: He thought the IF was a good document when he first read it. The new Office of Indian Energy Policy and Programs is nowhere to be seen in the policy, so rather than slow it down, he is taking the position that he has a right to insert himself into any part of ongoing discussions that the IF should be part of.

C: Notices that the Office of Renewable Energy is not part of the document; DOE has one Indian Policy and all offices are supposed to be following it. There is no clear indication of implementation of the policy. \$2 million is "nothing," not even a wind turbine. Let us make it a living document; make comments on what works and what does not, perhaps every six months. Maybe put a specific sign-off procedure in place for implementing changes. Have a way for updating the document on a regular basis.

Steve Morello: He will make recommendations before he leaves his office regarding where the document should reside. He wants to make sure that changes are value-added, and not just nominal changes.

Kristen Ellis: Other offices feel that the IF applies to "landlord" type issues and cultural preservation issues. These offices may like to have one, but not this one as it is written with the substance that is in it. OCRWM already has existing documents in place for interaction with tribes. OCRWM's interactions with tribes are wholly different.

Q: How many of these offices understand what a treaty means? All offices are affected by the Yakama treaty of 1855. Why are we waiting on the Secretary?

Steve Morello: The Secretary is likely waiting on staffing structures to be complete. He does not sign off on something if not fully staffed to implement and concur with it.

Discussion Relating to New Office of Indian Energy Policy and Programs

C: Concerns exist about tribal consultation and the role of the new office.

Steve Morello: He met with DOI heads to make sure they did not get their signals crossed regarding their roles under the EPAct. He has visited with David Lester of the Council of Energy Resource Tribes. The new office is currently established, but there is a lot of work to be done. How can he make the office effective, and make it a positive force in Indian country? He wants to make sure the new office is sustainable once the administration changes.

Audience comments on new office

C: Each tribe has its priorities. The best way to understand these is to visit their site(s), and look at how different issues impact each individual tribe.

C: Economic development is a big issue; many tribes are in dire straights, mainly due to the policies of the Bureau of Indian Affairs. DOE is in a good position to help tribes through renewable energy and the cleanup of sites. Education is a major problem in Indian country that affects future economic development.

C: On-site visits are extremely important. The Pueblo de San Ildefonso is the only Indian nation that shares a common boundary with DOE (Los Alamos).

C: There are a lot of concerns with historic contamination issues (air, water, etc); DOE should meet with tribal elders and councils.

C: Tribes want to be involved in decision-making regarding consultation. It is clear the president has not allocated suitable resources to Indian country. Production tax credits in Indian country for renewable energy projects would be helpful.

C: We need to be realistic about goals and timelines. Need to consult on an annual basis and hold managers accountable.

C: Supports consultation and communication to understand each other; this is the best way to get information on how each can help another. The Tribal Summit is like the IF in that it just keeps getting pushed away. Maybe we can have a smaller, more regional one. The sharing of information is key.

C: Many of the consultation protocols are misunderstood. There are some people out there in the field who do not understand that tribes are sovereign nations; right now, this is not consultation. Need to determine who should consult with who.

C: It is disappointing to earlier hear that if there is litigation, then DOE has to “hunker down.” If DOE stops communicating because litigation exists, then there will be a war. We need to find ways to work together, and then there can be real progress.

Representative Scott BigHorse (OK): Extended an invitation to meet with the Native American Caucus in Oklahoma, as well as with tribal leaders. They sometimes just get pushed aside on issues, so they then must file litigation. There are ways to get around this.

C: A lot of times there is miscommunication between DOE headquarters and field offices. DOE personnel need to understand what the treaties are, and why they are in place. Trying to convey the message that tribes have land bases they are trying to protect, not (only) just clean up.

(missed five minutes)

Steve Morello: He understands the need for additional resources in Indian country. He thinks he can help tribes become more “economically sovereign” by helping them develop energy policies on their lands. While he does not have money to give out to tribes in the form of grants, he can help them partner with other businesses. He likes the idea of installing sustainable, energy-efficient homes. Communication is a two-way street. He has noticed DOE has a good system for communication accountability—they have a system for responding to everybody. It is important for field offices to realize communication is a two-way street as well. Lawsuits are part of our nature of society; if you are sued, then you have to go into lawsuit mood, and you have to realize that the playing field changes when lawsuits are filed. Willie’s comments about tribal connections to the land are the most appropriate. But it all comes back to money, and DOE only has the money that Congress gives it. What is important is to identify priorities, and decide how most wisely to spend the funds that are available.

Discussion Relating to Tribal Summit

C: STGWG has been asking for a Tribal Summit for years. The issues we are dealing with are going to be around for a long time coming, for both tribes and DOE.

Steve Morello: He has talked about this to his superiors. They have told him to put together a plan, and then run it up the flagpole of his superiors. He needs to put one together that will be productive, and one where participants leave feeling satisfied. He proposes having two days for a Summit, getting the Secretary to commit to half a day, having blocks (breakouts) of time for different people/issues/offices within DOE, and having a concluding session where everybody comes back and shares what was discussed with future action items. He needs the upfront commitment from top-level people, time-wise, to make it work, so would need to have a Summit in Washington, D.C.. Also would like to schedule one around a time period when tribal members are already in the Washington area.

C: What Mr. Morello just said is what we have wanted all along, not just high-level people coming in, then leaving shortly thereafter.

C: Appreciates what Mr. Morello is saying. If expectations are not being met, then we need to know that. Likes Mr. Morello’s preferred approach of participation by others, as leaders need the appropriate time frames to talk about issues. The time frame could probably work. We are really trying to bring longer-term stewardship into the cleanup process; we do not want iron fences and concrete.

Discussion Relating to other Tribal Opportunities and Consultation under the EPA Act

Steve Morello: Authorized funding, but un-appropriated money, is common (e.g., for studies). Let us put some of the programs in place in Indian country, rather than doing studies and then putting them on the shelf. He is looking for opportunities to involve

tribes in various projects and areas. He spoke about the Intergovernmental Personnel Act Mobility Program that allows people to come in to learn about federal jobs and programs for a year or two, and then go back to the states with the experience they gain as one possible way to gain sustainability for the new office.

Need to be involved with interagency interactions. Two proposals for this: (1) Executive order (before the president leaves): What is meant by government-to-government, and what should consultation actually consist of? (composed mainly by interagency work group); (2) Teaching and training processes for senior officials so they all have a baseline understanding of what interacting/working with Indian country is all about. Because of this working group, there is more sensitivity on a much broader basis. The group took the tool that EPA had been using, and worked with NCAI on creating the training program.

(End of Day)